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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

MOBIL OIL CORPORATION,  
*Petitioner,*  
v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
and VALDUS ADAMKUS, REGIONAL ADMINISTRATOR,  
REGION V,  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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## QUESTIONS PRESENTED

1. Is the Validity of a Warrant Obtained by EPA Pursuant to its Alleged Authority Under the Clean Water Act to be Determined by the Standards for Demonstrating Probable Cause Set Forth in *Camara v. Municipal Court*, 387 U.S. 523 (1967), and *Marshall v. Barlow's*, 436 U.S. 307 (1978), or by the "Interest-Balancing" Test Adopted by the Court of Appeals in this Case?
2. Does an Affidavit Which Refers to an Alleged Inspection and Sampling Program but Does Not Recite or Incorporate by Reference the Criteria Governing that Program or Explain the Application of Those Criteria to the Facility Being Sampled Satisfy the Probable Cause Standards of *Camara* and *Barlow's*?
3. Does Section 308 of the Clean Water Act Authorize EPA to Sample Internal Wastewater Streams of a Facility When Such Sampling Is Not Required by the Facility's NPDES Permit or Agency Regulation, Is Not Necessary to Determine Compliance With the Act or the Facility's Permit, and Is Not Based on an Articulated Administrative Plan for Gathering Data to Support Development of New Effluent Limitations?

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*Respondents.*

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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Mobil Oil Corporation\* respectfully petitions for a writ of certiorari to review the opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on September 14, 1983.

**OPINIONS BELOW**

The opinion of the Court of Appeals in *Mobil Oil Corporation v. United States Environmental Protection Agency* is reported at 716 F.2d 1187 (7th Cir. 1983), and is reproduced in the Appendix to this petition. App. 1a. The final order and judgment of the district court is reported at 18 Env't Rep. Cas. (BNA) 2031 (N.D. Ill. 1982), and is also reproduced in the Appendix to this petition. App. 9a.

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\* A list of Mobil Oil Corporation's parent, subsidiaries and affiliates, as required by Rule 28.1 of the Rules of the Supreme Court, follows the signature page of this petition. App. 1b.

## JURISDICTION

The opinion of the Court of Appeals in this case was entered on September 14, 1983. A petition for rehearing and suggestion for rehearing *en banc* were denied on November 8, 1983. This petition is being filed within the time specified in Rule 20.2 of the Rules of the Supreme Court and 28 U.S.C. § 2101(c) (1976).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., amend. IV.

Section 308 of the Clean Water Act, 33 U.S.C. § 1318 (1976 & Supp. V 1981), provides in pertinent part:

- (a) Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard or standard of performance under this chapter; (2) determining whether any person is in violation of such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 1315, 1321, 1342, 1344 (relating to State permit programs), and 1364 of this title—



- (A) The Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and
- (B) The Administrator or his authorized representative, upon presentation of his credentials—
  - (i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and
  - (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

33 U.S.C. § 1318(a) (1976 & Supp. V 1981).

#### STATEMENT OF THE CASE

Petitioner Mobil Oil Corporation (Mobil) operates a petroleum refinery near Joliet in Channahon Township, Will County, Illinois. The Joliet refinery is among the most modern facilities of its kind in the United States.

The refinery discharges treated wastewater into the Des Plaines River pursuant to a National Pollutant Dis-

charge Elimination System (NPDES) permit issued by the State of Illinois.<sup>1</sup> In addition to the compliance monitoring which Mobil is required to perform and report to both EPA and the State of Illinois under the terms of its NPDES permit, the State of Illinois has inspected the Joliet refinery on an annual basis for compliance with the Clean Water Act (CWA).<sup>2</sup> The refinery has never been found to be in violation of any environmental law or regulation. In fact, in 1982, the Joliet refinery's wastewater treatment plant won an award from the State of Illinois for environmental excellence.

On April 28, 1982, three representatives from EPA's Region V office arrived at the Joliet refinery and requested permission to take samples of the refinery's discharges at the sampling points specified in Mobil's NPDES permit.<sup>3</sup> Those points, which enable sampling of Mobil's wastewater after final treatment, are located near the Des Plaines River and are separate from other

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<sup>1</sup> Under the Federal Water Pollution Control Act, as amended, commonly known as the Clean Water Act (CWA or the Act), 33 U.S.C. § 1251 *et seq.* (1976 & Supp. 1981), individual "point sources," defined as "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged," 33 U.S.C. § 1362(14) (Supp. V 1981), must obtain a NPDES permit from the Administrator of the Environmental Protection Agency (EPA or the Agency) or from states, such as Illinois, that have approved permit programs. 33 U.S.C. § 1342(a), (b) (1976 & Supp. V 1981). The NPDES permit in effect at the time the inspection in this case took place was issued by the State of Illinois on December 11, 1980. That permit is set forth in the Appendix to this petition. App. 15a. The Joliet refinery is currently operating under an NPDES permit issued by the State of Illinois which became effective on February 9, 1983.

<sup>2</sup> See, e.g., App. 41a.

<sup>3</sup> Mobil did not object to EPA's sampling of the Joliet refinery's discharges at the sampling points specified in Mobil's NPDES permit. Mobil agrees that EPA has authority to sample at those points. Thus, this case does not involve any attempt to prevent EPA from determining whether Mobil was in compliance with the terms of its NPDES permit. See text pp. 24, 25, *infra*.

parts of the refinery's operations.<sup>4</sup> After the EPA representatives obtained samples from these points, they asked to sample wastewater streams and sludges before final treatment at points which were located inside the wastewater treatment area of the Joliet refinery.<sup>5</sup> Those points were not designated for sampling in Mobil's NPDES permit. EPA's representatives did not explain why the Joliet refinery had been chosen for internal wastewater sampling, nor did they indicate the use to which the data obtained from that sampling would be put. Mobil denied the EPA representatives' request to take samples of its internal wastewater streams and sludges because neither section 308 of the CWA nor its NPDES permit required those streams to be sampled.

Four months later, on August 24, 1982, EPA made an *ex parte* application to a federal magistrate for a warrant "to enter, inspect and photograph" Mobil's refinery and "to take samples of sludge and liquid influents and effluents of the Mobil Oil Company facility . . . in accordance with Section 308 of the Clean Water Act, 33 U.S.C. § 1318."<sup>6</sup> That provision states, in pertinent part, that the Administrator or his authorized representative

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<sup>4</sup> Mobil's NPDES permit required it to sample process wastewater, sanitary wastewater, non-contact cooling water and storm water "at a point representative of discharge but prior to mixing with other effluents." App. 18a, 20a, 22a, 24a. Since a "discharge" occurs under the CWA only upon "any addition of any pollutant to navigable waters from any point source," 33 U.S.C. § 1362(12) (A) (1976), the place at which samples "representative of discharge" are taken is located near the Des Plaines River in order to allow monitoring of each effluent stream after treatment but before mixing with other effluent streams.

<sup>5</sup> Specifically, the EPA inspectors requested permission to sample wastewater streams that had not yet entered the aeration basin or the treated water guard basin located inside the refinery, and sludge, which is removed from wastewater and is never discharged, that had not yet been subjected to heat treatment.

<sup>6</sup> App. 42a.

may "sample any effluents which the owner or operator of such [point] source is required to sample" under clause (A) of section 308(a). 33 U.S.C. § 1318(a) (B) (ii) (1976).<sup>7</sup> Neither Mobil's permit, nor EPA's regulations, required Mobil to perform internal wastewater sampling.

EPA's one-page application for a warrant was accompanied by affidavits executed by Basim J. DiHu, the EPA Region V environmental engineer who had been refused permission to conduct internal wastewater sampling at the Joliet facility, and Jonathan Barney, another local EPA employee.<sup>8</sup> The DiHu affidavit simply recited the events leading up to Mobil's refusal to permit EPA's representatives to sample internal wastewater streams and sludges at the Joliet facility.<sup>9</sup> The Barney affidavit stated that such sampling was "part of an ongoing administrative program to monitor facilities that have some potential for the discharge of toxic pollutants" and was intended "to monitor compliance with existing NPDES permit requirements."<sup>10</sup> Mr. Barney's reference to this monitoring program, however, consisted only of his characterization of it as "extended compliance sampling inspections for toxicants (known as CSI-Ts)" which were designed "to check for compliance with existing effluent limitations and other permit requirements, and to determine whether additional toxic pollutants are being discharged that should be limited and otherwise addressed in the next permit."<sup>11</sup> His affidavit did not describe or

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<sup>7</sup> Clause (A) of section 308(a) authorizes the Administrator to require the owner or operator of a point source to "sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe) . . . ." 33 U.S.C. § 1318(a) (A) (iv) (1976).

<sup>8</sup> App. 43a.

<sup>9</sup> App. 46a.

<sup>10</sup> App. 45a.

<sup>11</sup> App. 43a-44a.

incorporate by reference the administrative plan on which this alleged program was based. Nor did it articulate reasons why Mobil's refinery had been chosen for inspection under that program.<sup>12</sup>

On August 27, 1982, the magistrate issued the warrant requested by EPA on the basis of his finding that "there has been a sufficient showing that reasonable legislative or administrative standards for conducting an inspection and investigation have been satisfied . . . ." <sup>13</sup>

On Monday, August 30, 1982, EPA served the warrant upon Mobil and began sampling internal wastewater streams at the Joliet refinery. On the next day, Mobil filed a motion to quash the warrant which argued, *inter alia*, that EPA had failed to meet the standards for probable cause established in *Camara v. Municipal Court*, 387 U.S. 523 (1967), and *Marshall v. Barlow's*, 436 U.S. 307 (1978). On the same day, August 31, 1982, Mobil's motion to quash the warrant was denied. EPA's sampling of internal wastewater streams at the Joliet refinery continued until September 2, 1982.

On September 2, 1982, Mobil filed in the District Court for the Northern District of Illinois an appeal from the magistrate's denial of its motion to quash the warrant, and a complaint which sought injunctive relief against

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<sup>12</sup> Moreover, the affidavit failed to explain why, after a wait of four months, the Agency felt compelled to seek an *ex parte* warrant rather than to follow the procedures specified in section 309 of the Clean Water Act which requires the issuance of an administrative order or a district court action for injunctive relief in the event of a failure to comply with section 308. 33 U.S.C. § 1319 (1976 & Supp. V 1981).

<sup>13</sup> App. 48a. The warrant authorized EPA to "sample and seize" internal wastewater streams consisting of "combined effluent from the east and west clarifiers of the activated sludge treatment system," "sludge prior to the heat treatment system," and "influent to the east and west aeration basin of the activated [sic] sludge treatment system (combined raw waste following east equalization basin) . . . ." App. 49a.

further execution of the warrant and against EPA's use of data obtained from the internal wastewater sampling, and which also requested a declaratory judgment and a permanent injunction against further sampling at the Joliet refinery. Jurisdiction of the district court was invoked pursuant to 28 U.S.C. § 1331 (Supp. V. 1981). After consolidating these actions, the district court, on September 7, 1982, issued an order requiring EPA to retain, and refrain from using for any purpose, the samples obtained pursuant to the warrant.

Before the district court, Mobil argued that EPA's sampling of internal wastewater streams exceeded the scope of the Agency's authority under section 308 of the Clean Water Act and violated Mobil's rights under the Fourth Amendment. Rejecting these arguments, the district court, on December 28, 1982, issued a final order and judgment holding that inspection and sampling of Mobil's internal wastewater streams were authorized by a valid warrant and by section 308 of the Act.<sup>14</sup> On the same day, the district court granted Mobil's motion for a stay pending appeal for a period of twenty days.

On January 10, 1983, Mobil appealed the district court's decision to the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 1291 (1976 & Supp. V 1981). On the next day, Mobil filed a motion for stay pending appeal with the Court of Appeals. That court, on January 17, 1983, issued an order prohibiting EPA from using or transmitting the samples obtained under the warrant, and from inspecting or sampling Mobil's wastewater streams in the future at points other than those specified in the NPDES permit for the Joliet refinery.

In its appeal to the Seventh Circuit, Mobil argued that neither section 308 of the CWA nor the NPDES permit issued for the Joliet refinery authorized EPA to sample

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<sup>14</sup> App. 11a.

internal wastewater streams, and that such sampling was an unreasonable search and seizure of Mobil's property in violation of the Fourth Amendment.<sup>15</sup> The Court of Appeals, in an opinion issued on September 14, 1983, rejected Mobil's arguments.

Rather than testing the affidavits submitted by EPA against the standards for demonstrating probable cause set forth in *Barlow's*, the Seventh Circuit engaged in a balancing of what it viewed as the privacy interests of Mobil against the government's interest in sampling internal wastewater streams at Mobil's refinery.<sup>16</sup> It concluded that Mobil had no interest in preventing internal sampling of its facility other than "to keep the EPA in the dark as much as possible about what pollutants are present in the water it dumps into the Des Plaines River and about how efficient its treatment processes are at cleaning its waste water of pollutants."<sup>17</sup> The Court of Appeals also found that "[a]ny interest Mobil may have in frustrating the EPA's efforts to assess the efficiency of its treatment processes and to detect trace amounts of toxic pollutants in waste water it dumps into the Des Plaines River is not entitled to protection."<sup>18</sup>

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<sup>15</sup> As noted above, note 3 *supra*, Mobil did not challenge EPA's right to conduct discharge sampling at the points specified in Mobil's NPDES permit.

<sup>16</sup> 716 F.2d 1190-91, App. 4a. The Court of Appeals in its opinion never mentioned *Camara*, *Barlow's* or this Court's other decisions addressing the standards for obtaining *ex parte* search warrants by administrative agencies. Indeed, the Seventh Circuit never even mentioned its own decisions interpreting the probable cause test set forth in those cases. See note 23, *infra*.

<sup>17</sup> 716 F.2d at 1190, App. 5a. There was never any allegation by EPA, or anyone else, during the entire course of this case that Mobil wanted to "keep EPA in the dark" about its discharges into the Des Plaines River or about the efficiency of its treatment processes.

<sup>18</sup> *Id.*, App. 6a.



One day after issuance of the Seventh Circuit's decision, the Deputy Director of EPA's Water Division sent a memorandum to all of the Agency's regional offices interpreting that decision as conferring "very broad authority" upon the Agency to sample internal wastewater streams within an industrial facility.<sup>19</sup>

Mobil subsequently filed a petition for rehearing and suggestion for rehearing *en banc* urging the full Seventh Circuit to review the panel's opinion. This petition was denied on November 8, 1983.<sup>20</sup>

On November 15, 1983, Mobil petitioned the Court of Appeals to stay the issuance of its mandate pending Mobil's application to this Court for a writ of certiorari. Two days later, Chief Judge Cummings, author of the opinion in this case, denied Mobil's petition for stay of the mandate "[b]ecause our opinion was clearly right."

On November 23, 1983, Mobil filed with this Court an application to stay the mandate of the Seventh Circuit and to reinstitute the stay entered by that court on January 17, 1983 prohibiting EPA from using or transmitting the samples obtained under the warrant and from inspecting wastewater streams at points other than those specified in the NPDES permit. Justice Stevens, acting for this Court, denied Mobil's application on November 23, 1983.

#### REASONS FOR GRANTING CERTIORARI

Certiorari should be granted in this case because the opinion of the Seventh Circuit directly conflicts with this Court's decisions in *Marshall v. Barlow's*, 436 U.S. 307 (1978), and *Camara v. Municipal Court*, 387 U.S. 523 (1967), and with decisions of other circuit courts of appeals which require either evidence of a violation or an

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<sup>19</sup> App. 51a.

<sup>20</sup> App. 14a.



articulated administrative plan based on neutral criteria before finding probable cause for a search and seizure by an administrative agency. EPA clearly failed to satisfy these requirements in obtaining the warrant at issue in this case. However, instead of applying the standards set forth in *Barlow's* to the affidavits EPA submitted to justify its sampling of Mobil's internal wastewater streams, the Seventh Circuit substituted its own "interest-balancing" analysis in determining the legality of that sampling. As a result, the Seventh Circuit has effectively eliminated any requirement that EPA demonstrate probable cause before it obtains warrants to search and seize the property of those regulated under the Clean Water Act.

Certiorari should also be granted because this case presents important questions of law that deserve this Court's attention. Thousands of industrial facilities are subject to regulation under the Clean Water Act. The showing required of EPA before it can engage in nonconsensual inspections and sampling of those facilities is of great concern to those subject to that Act as well as to those who are subject to other federal environmental statutes. Particularly as agency activity under those laws moves into the enforcement stage, there is a compelling need for this Court to provide more detailed guidance to the lower courts in the application of the probable cause standards of *Barlow's*. In some instances, the lower courts have scrupulously required full agency compliance with the tests for probable cause established by this Court. Other courts, however, such as the Seventh Circuit in this case, have upheld the issuance of warrants to administrative agencies on the basis of nothing more than conclusory, self-serving affidavits that fail to articulate an administrative plan on which the desired search is based and fail to explain how the particular facility is covered by that plan. The lower courts should not be left free to create their own interpretations of the *Barlow's* standards. Only a definitive statement from this Court regarding

the showing that is necessary to meet those standards can ensure consistent and proper application of *Barlow's*.

Finally, certiorari should be granted in this case of first impression to correct the erroneous interpretations by the district court and the Court of Appeals of EPA's authority under section 308 of the CWA. The breadth of EPA's authority under this section of the CWA is clearly an important issue of federal law. Neither the Act nor its legislative history provides any basis for the sampling of internal wastewater streams carried out by EPA in this case. Yet with the Seventh Circuit's opinion in hand, EPA can now claim probable cause for non-consensual searches and seizures on the basis of its supposed plenary authority to inspect and seize samples from anywhere within a facility subject to the Act. That this is not a hypothetical problem is demonstrated by the rapidity with which EPA seized upon the Court of Appeal's decision as justification for a broad program of internal wastewater sampling.

**A. The Decision of the Court of Appeals Conflicts With This Court's Decisions in *Camara* and *Barlow's***

This Court held in *Camara* and *Barlow's* that normally, where consent is not given for a search or seizure by an administrative agency, the Fourth Amendment requires the agency to obtain a warrant before proceeding. *Camara*, 387 U.S. at 528-29; *Barlow's*, 436 U.S. at 312-13. The Court also articulated the standards for demonstrating the probable cause necessary to obtain such a warrant. *Camara*, 387 U.S. at 538; *Barlow's*, 436 at 320-21.<sup>21</sup> Recognizing its obligations under *Barlow's*,

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<sup>21</sup> EPA has acknowledged that, with the possible exception of the Federal Insecticide, Fungicide, and Rodenticide Act, a warrant is required for inspections under each of the environmental statutes administered by the Agency, including the Clean Water Act. *Environment Reporter (BNA)*, 41 *Federal Laws Index* 2451 (April 11, 1979). See also App. 54a.

EPA applied for and obtained an *ex parte* warrant to perform internal wastewater stream sampling at Mobil's Joliet refinery. Yet in reviewing Mobil's claim that EPA had not demonstrated probable cause to support issuance of that warrant, the Seventh Circuit did not examine EPA's action in light of the standards set forth in *Barlow's*.<sup>22</sup> Instead, EPA's failure to demonstrate probable cause for a warrant to sample Mobil's internal wastewater streams was blessed by the Seventh Circuit in an opinion which effectively eliminates that requirement.

In determining the legality of a search or seizure conducted by an administrative agency pursuant to a warrant, other circuit courts of appeals have uniformly tested the validity of a warrant by the probable cause standards established by this Court in *Barlow's*.<sup>23</sup> In this case, however, the Seventh Circuit used its own "interest-balancing" analysis to determine whether Mobil had any Fourth Amendment rights which the Court deemed worthy of protection and whether EPA's regulatory interest outweighed Mobil's privacy interest. According to the Court of Appeals, this "interest-balancing" analysis consisted of

identify[ing] what interest Mobil has in preventing the EPA from sampling untreated waste water, what

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<sup>22</sup> The district court found that EPA's inspection and sampling were authorized by section 308 and consistent with the Fourth Amendment. 18 Env't Rep. Cases (BNA) at 3032, App. 11a. However, it did not discuss the basis for these findings.

<sup>23</sup> See, e.g., *Donovan v. Wollaston Alloys, Inc.*, 695 F.2d 1 (1st Cir. 1982); *United States v. Mississippi Power & Light Co.*, 638 F.2d 899 (5th Cir.), cert. denied, 454 U.S. 892 (1981); *Stoddard Lumber Co. Inc. v. Marshall*, 627 F.2d 984 (9th Cir. 1980).

Indeed, in the OSHA context, the Seventh Circuit itself has recognized the applicability of the probable cause standards to searches by administrative agencies. See *Marshall v. Chromalloy American Corp.*, 589 F.2d 1335 (7th Cir.), cert. denied, 444 U.S. 844 (1979); *In Re Northwest Airlines, Inc.*, 587 F.2d 12 (7th Cir. 1978).

interest the EPA has in getting those samples, and . . . inquir[ing] whether Congress somehow balanced those interests when it enacted Section 308, or if not, how Congress would likely have balanced them had it undertaken to do so.<sup>24</sup>

The Seventh Circuit's use of this novel analysis conflicts directly with the rule established by this Court in *Camara* and *Barlow's*. Those cases hold that, unless the government can prove the application of one of the carefully defined exceptions to the warrant requirement, searches of a commercial establishment without a valid warrant are *per se* unreasonable and that the owner's privacy interest suffers regardless of his motivation for forcing the government to obtain a warrant or the government's purpose for the search or seizure of property. *Barlow's*, 436 U.S. at 312-13. If it is not reversed, the Seventh Circuit's decision will establish a standard for testing the legality of searches and seizures of private property under the Clean Water Act which conflicts directly with the prior holdings of this Court and other circuit courts of appeals.<sup>25</sup>

Had the Seventh Circuit tested EPA's actions against the standards set forth in *Camara* and *Barlow's*, it would have found that there was no probable cause to support issuance of the warrant. For a warrant to be valid, an agency has the burden of demonstrating probable cause.

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<sup>24</sup> 716 F.2d at 1189, App. 4a.

<sup>25</sup> Moreover, as a means of resolving the intended limits of EPA's authority under section 308 of the CWA, the Court of Appeals' "interest-balancing" analysis does not comport with recognized tools of statutory construction. It does not start with the language of the statute, employ any of the canons of statutory construction, or consider the legislative history of the provision at issue. Rather, it hypothesizes the potential interests of each litigant and then seeks to balance those interests through an analysis Congress never contemplated, much less sanctioned.

*Barlow's*, 436 U.S. at 320. In the context of a search and seizure of property by an administrative agency, probable cause may be based on either "specific evidence of an existing violation" or on a showing that "reasonable legislative or administrative standards for conducting an . . . inspection are satisfied with respect to a particular [establishment]." *Id.* at 320-21 (quoting *Camara*, 387 U.S. at 538). There is no allegation in the Barney or Dihu affidavits that Mobil was in violation of the terms of its NPDES permit.<sup>26</sup> Nor has EPA contended at any time in this litigation that any such facts exist. Instead, this was a routine inspection and sampling, for which probable cause can be established only if EPA's action was the result of a legislative or "administrative plan containing specific neutral criteria." *Barlow's*, 436 U.S. at 323.

To meet this latter test, EPA must, at a minimum, satisfy two requirements. First, it must be seeking the warrant pursuant to an administrative plan containing neutral criteria which specify "the purpose, frequency, scope, and manner" of conducting sampling. *Michigan v. Tyler*, 436 U.S. 499, 507 (1978); *Barlow's*, 436 U.S. at 323. Second, the Agency must show why the sampling of Mobil's facility fits the neutral criteria of the administrative plan or program. *Barlow's*, 436 U.S. at 320-21, 323 n.20. Neither requirement was satisfied in this case.

As the sole justification for obtaining a warrant, EPA claimed that samples from Mobil's treatment processes and internal wastewater streams were necessary to determine whether Mobil was in compliance with the terms of its permit and to determine whether "additional pollutants are being discharged which should be limited . . . in the next permits." The Agency claimed these actions were being taken pursuant to a "CSI-T" program for monitoring toxic pollutants. The Barney affidavit,

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<sup>26</sup> See App. 43a-47a.

however, failed to describe the specific toxic pollutants or particular point source categories covered by the "CSI-T" program or the method used to select facilities for inclusion in it.<sup>27</sup> Nor did the affidavit provide information about the purpose, frequency, scope, and manner of conducting sampling under the program. Finally, EPA failed to explain why the Joliet refinery was chosen for inspection under the CSI-T program when it was already subjected to annual compliance inspections by the State of Illinois and self-monitoring and reporting to the State and EPA under the terms of its NPDES permit.<sup>28</sup> Rather, EPA relied solely on the type of "bare assertion" about the existence of this administrative program held insufficient in *Barlow's*.<sup>29</sup>

In fact, it is clear that EPA's sampling of Mobil's internal wastewater streams was not consistent with or authorized by an administrative plan based on neutral criteria. In response to a Freedom of Information Act re-

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<sup>27</sup> *Barlow's*, 436 U.S. at 323 n.20. EPA's failure to provide any meaningful program description in support of its request for a warrant stands in marked contrast to the detailed descriptions of OSHA programs upheld by several courts of appeals. *Donovan v. Wollaston Alloys, Inc.*, 695 F.2d 1 (1st Cir. 1982); *Stoddard Lumber Co., Inc. v. Marshall*, 627 F.2d 984 (9th Cir. 1980); *Marshall v. Chromalloy American Corp.*, 589 F.2d 1335 (7th Cir.), *cert. denied*, 444 U.S. 884 (1979). In each of these cases, the affidavits showed that the Secretary of Labor had established an inspection program concentrating on a particular industry, the industry had been selected based on data about injury rates contained in the Secretary's files, and the criteria for selection of the industry were directly related to the Secretary's statutory responsibility for reducing workplace hazards. Moreover, at least one circuit required a detailed description of the procedure for systematically selecting the target industries of an inspection in order to demonstrate the regularity of the program. *Wollaston*, 695 F.2d at 3, 5.

<sup>28</sup> See App. 20a-21a.

<sup>29</sup> 436 U.S. 323 n.20. See *In Re Northwest Airlines, Inc.*, 587 F.2d 12 (7th Cir. 1978). See also, *Weyerhaeuser v. Marshall*, 592 F.2d 373 (7th Cir. 1979).

quest, EPA has released documents which demonstrate that (1) compliance sampling inspections or "CSIs" are for the purpose of determining compliance with NPDES permit limitations and not for the gathering of data to determine whether additional effluent limitations should be imposed in an NPDES permit,<sup>30</sup> (2) during compliance sampling inspections, samples are to be taken at "the facility's discharge and other NPDES permit-designated monitoring points",<sup>31</sup> (3) when entry is being sought for the purpose of gathering data to develop new effluent limitations guidelines, EPA policy requires a lengthy affidavit detailing the specifics of the administrative program for which the data are being sought and why the particular facility has been chosen for that program,<sup>32</sup> and (4) that there is no administrative plan or program based on neutral criteria for sampling internal wastewater streams and processes at a facility to gather data for case-by-case additional NPDES permit limitations.

In short, EPA's affidavits in support of its application for a warrant in this case fall far short of meeting the *Barlow's* test for probable cause. By not only affirming the district court's ruling but also by establishing an erroneous new standard for reviewing EPA searches and seizures under the CWA, the Seventh Circuit has made the probable cause requirement of the Fourth Amendment

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<sup>30</sup> App. 86a-87a.

<sup>31</sup> App. 93a.

<sup>32</sup> App. 57a, 77a-85a. Even if EPA had submitted such an affidavit in support of its request for a warrant in this case, probable cause would not have been established for an inspection and sampling of internal wastewater streams and treatment facilities at the Joilet refinery. To be valid, an administrative plan must be consistent with the agency's statutory authority. *Barlow's*, 436 U.S. 323. As discussed below, *see* text pp. 21-27, *infra*, EPA has no authority under section 308 of the CWA to engage in nonconsensual sampling of Mobil's internal wastewater streams.



virtually meaningless when applied to EPA warrant applications. In the future, magistrates will be asked simply to rubber-stamp EPA assertions of broad statutory authority justifying seizures of private property. In order to prevent such a result, this Court should correct the Seventh Circuit's error.

**B. This Case Presents Important Questions of Law That Deserve Attention By This Court**

The constitutional and statutory issues presented by this case deserve this Court's prompt attention. The Clean Water Act is one of the most significant environmental statutes enacted during the past decade. Virtually all of American industry is subject to its requirements. Given the alacrity and expansiveness of EPA's response to the Seventh Circuit's decision, the Agency clearly intends to take full advantage of it. The memorandum issued by EPA the day after the Seventh Circuit's decision assumes the Agency has a *carte blanche* to engage in inspection and internal sampling of facilities subject to the CWA. If left undisturbed, the Seventh Circuit's decision not only will result in searches and seizures that are unauthorized by section 308, but also in warrants based on Agency assertions of virtually unbridled discretion under the Clean Water Act to inspect and seize private property of America's corporate citizens.

The march of intrusive agency sampling will not stop with the Clean Water Act. It is reasonable to expect that the authority claimed by EPA for in-plant sampling will be extended to the other major environmental statutes implemented by that Agency. There is, for example, a pronounced similarity between the sampling authority granted by section 308 of the Clean Water Act and that granted by section 114 of the Clean Air Act, 42 U.S.C. § 7414 (Supp. V 1981).<sup>33</sup> Where the statutory limitations

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<sup>33</sup> EPA has shown no hesitancy to stretch its inspection authority under section 114 of the Clean Air Act to its full limits and



on sampling are less strict,<sup>34</sup> EPA will likely see no legal restraint at all upon its seizure of in-plant samples. Thus, the decision of the Seventh Circuit in this case points the way for a repetitive series of unconstitutional searches and seizures under many of the major environmental statutes.

Because of the pervasiveness of the federal environmental laws and the likelihood that EPA will engage in the future in numerous inspections and sampling of facilities that are subject to their provisions, this Court should provide clear guidance to the lower courts on the application of *Barlow's* probable cause requirement to such inspections and sampling. For the most part, the environmental statutes have now been implemented through promulgation of substantive standards, and the regulatory effort will naturally turn to the enforcement of these standards through inspections and sampling of regulated facilities. Without a clearer explanation of the *Barlow's* probable cause standard than this Court has provided to date, the lower courts may acquiesce in intrusive and unjustified enforcement of this federal legislation at the expense of the constitutional rights of those subject to its reach.

The likelihood of such an occurrence is underscored by the fact that the lower courts, in the OSHA context, have demonstrated substantial variance in their application of what has been termed the "extremely vague" standard set forth in *Barlow's*.<sup>35</sup> For example, the First and Ninth Circuits have scrutinized warrant applications and sup-

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beyond. *Dow Chemical Co. v. EPA*, 536 F. Supp. 1355 (E.D. Mich. 1982) (use of surreptitious aerial photography to probe internal processes of chemical plant found unauthorized under section 114).

<sup>34</sup> See Resource Conservation and Recovery Act, 42 U.S.C. § 6927(a)(1) (Supp. V 1981); Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9604(e)(1)(B) (Supp. V 1981).

<sup>35</sup> See Rothstein. *OSHA Inspections After Marshall v. Barlow's, Inc.*, 1979 Duke L.J. 63, 90.

porting affidavits for detailed information on how target industries were selected for inspection under an administrative plan, while the Third and Sixth Circuits have not even looked to see whether there was an administrative plan or any specific neutral criteria but have instead based their finding of probable cause solely on the agency's assertion that the premises had never been searched before. Compare *Donovan v. Wollaston Alloys, Inc.*, 695 F.2d 1, 5 (1st Cir. 1982), and *Stoddard Lumber Co., Inc. v. Marshall*, 627 F.2d 984, 988 (9th Cir. 1980), with *United States v. Prendergast*, 585 F.2d 69, 70 (3d Cir. 1978), and *United States v. Voorhies*, 663 F.2d 30, 33 (6th Cir. 1981), cert. denied, 456 U.S. 929 (1982).<sup>36</sup> Moreover, while the First and Ninth Circuits have relied on conclusory assertions in assessing whether an agency has adequately shown that a particular company meets the criteria specified in a valid administrative plan, the Eleventh and Seventh Circuits have required the agency to demonstrate, based on specific facts about a particular facility, that it satisfies each of the neutral criteria of the administrative plan. Compare *Wollaston*, 695 F.2d at 6 and *Stoddard Lumber*, 627 F.2d at 988, with *First Alabama Bank of Montgomery v. Donovan*, 692 F.2d 714, 716-17, 721-22 (11th Cir. 1982), and *In Re Matter of Northwest Airlines*, 587 F.2d 12, 15 (7th Cir. 1978).

In sum, the conclusory nature of EPA's affidavits and the lower courts' rubber-stamping of EPA's warrant application demonstrate the need for this Court to articulate more clearly the probable cause requirement of *Barlow's* in order to prevent agencies in the future from obtaining

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<sup>36</sup> Despite their general agreement that an agency must be required to substantiate its decision to inspect certain industries, the Ninth Circuit has relied upon statistical evidence establishing a specific threshold for inclusion of a particular industry within an administrative program, while the First Circuit has not. Compare *Stoddard Lumber*, 627 F.2d at 988, with *Wollaston*, 695 F.2d at 6.

warrants predicated on self-serving but baseless assertions such as those made by EPA in this case.

**C. The Seventh Circuit's Erroneous Interpretation of Section 308 of the CWA Raises a Question of First Impression And Substantial Federal Importance**

It is axiomatic that EPA may only engage in inspections and sampling authorized by statute, and that the scope and purposes of an administrative plan for such activities must be consistent with the scope and purposes of that authority. *See Barlow's*, 436 U.S. at 323. In this case, the Seventh Circuit upheld sampling of Mobil's internal wastewater streams by EPA which clearly exceeded the Agency's statutory authority. By conferring virtually unbridled discretion upon EPA to inspect and seize private property, the Court of Appeals has lowered the threshold for EPA demonstrations of probable cause to a level that all but eliminates that requirement.<sup>37</sup>

Any analysis of EPA's authority to engage in internal sampling of a facility must begin with the language of the statute. *EPA v. National Crushed Stone Ass'n*, 449 U.S. 64, 73-74 (1980). Unlike the sampling authority conferred upon EPA in some other environmental statutes,<sup>38</sup> EPA's authority under the Clean Water Act to inspect and sample wastewater streams at industrial facilities is limited to those "effluents which the owner or operator of such source is required to sample."<sup>39</sup> Although the term "effluent" is not specifically defined in

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<sup>37</sup> If magistrates believe that EPA has virtually limitless authority under section 308 to enter and sample the internal wastewater streams of industrial dischargers as the Seventh Circuit has held, they can be expected to provide little check on arbitrary EPA inspections in the future.

<sup>38</sup> See note 34, *supra*.

<sup>39</sup> 33 U.S.C. § 1318(a)(B)(ii) (1976) (emphasis added).

the CWA, the Act does define the term "effluent limitation."<sup>40</sup> Read in conjunction with the definitions of "point source"<sup>41</sup> and "discharge of a pollutant,"<sup>42</sup> an effluent limitation means a restriction upon the discharge of pollutants from a discrete and confined conveyance to navigable waters. To read the term "effluent" as used in section 308 harmoniously with the remainder of the Act, effluent must be defined as material which is discharged from a discrete and confined conveyance to navigable waters.<sup>43</sup>

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<sup>40</sup> Section 502(11) provides:

The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

33 U.S.C. § 1362(11) (1976).

<sup>41</sup> Section 502(14) provides:

The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

33 U.S.C. § 1362(14) (Supp. V 1981).

<sup>42</sup> Section 502(12) provides:

The term "discharge of a pollutant" and the term "discharge of pollutants" each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

33 U.S.C. § 1362(12) (1976).

<sup>43</sup> See The Environmental Policy Division of the Congressional Research Service of the Library of Congress, *A Legislative History of the Water Pollution Control Act Amendments of 1972*, at 800-01, 1274, 1304, 1494-95 (1973).

Moreover, even if the term "effluents" contained in section 308(a)(B)(ii) can be read to encompass, in limited circumstances, internal wastewater streams, the additional restriction contained in section 308(a)(B)(ii) makes plain that EPA had no authority to engage in such sampling here. Under that section, EPA is empowered to sample only those effluents "the owner or operator is required to sample." But Mobil has never been "required" to sample its internal wastewater streams. EPA has not acted pursuant to section 308(a)(A) to prescribe by rule internal sampling for point sources such as Mobil's petroleum refinery.<sup>44</sup> Moreover, the Illinois NPDES program,

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<sup>44</sup> Section 308(a)(A) provides:

(A) the Administrator shall require the owner or operator of any point source to . . . (iii) install, use and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require.

33 U.S.C. § 1318(a)(A) (1976).

EPA has promulgated regulations to implement this statutory authority at 40 C.F.R. § 122.44(i) (1983). Under these regulations, sampling of internal wastewater streams is only required of an owner or operator if an effluent limitation is imposed on an internal wastewater stream, 40 C.F.R. § 122.44(i)(1)(iii) (1983), and such an effluent limitation can only be imposed under certain specified "exceptional circumstances." 40 C.F.R. § 122.45(i)(2) (1983). Mobil's permit does not contain any limitations on internal wastewater streams, and thus the Agency is without authority under the CWA or its implementing regulations to sample Mobil's internal wastewater streams.

In fact, EPA's authority to impose any restrictions at all on internal wastewater streams is not settled. Because the imposition of effluent limitations on internal wastewater streams conflicts with the statutory definition in section 502(11) of the CWA, EPA's authority to provide for even the limited exception set forth in 40 C.F.R. § 122.45(i)(2) was challenged in a consolidated action entitled *Natural Resources Defense Council, Inc. v. EPA*, No. 80-1607, in the United States Court of Appeals for the District of Columbia

which has been approved by EPA as satisfying the sampling requirements of section 308,<sup>43</sup> does not provide for internal wastewater stream sampling. As a consequence, Illinois issued an NPDES permit to Mobil, without objection from EPA, which only required sampling "at a point representative of discharge." That point occurs only after all treatment of Mobil's wastewater has been completed.<sup>44</sup> Thus, the plain meaning of section 308, read in conjunction with both EPA's and Illinois' implementation of the Act, limits EPA's sampling at Mobil's refinery to points representative of discharge subsequent to all treatment activities. And this reading of section 308 provides EPA and the states ample ability to ensure compliance by dischargers with the terms of their NPDES permits. As a result, EPA's attempt to sample wastewater streams and sludges before final treatment at points which were located inside the wastewater treatment portions of the Joliet refinery clearly exceeded the Agency's statutory authority.

Moreover, the sampling of internal wastewater streams and sludges at Mobil's refinery did not serve any of the purposes set forth in section 308 and recited in the Barney affidavit. The Barney affidavit attempts to justify the seizure of internal wastewater stream samples from Mobil's refinery by claiming the sampling data was necessary to determine compliance with permit terms and to ascertain whether additional discharge limitations should

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Circuit. Mobil was one of the many petitioners in that proceeding in which over fifty issues were raised. EPA, however, chose not to litigate this issue, among others, and a stipulation was entered stating that the issue was not ripe for litigation at that time and would be reserved for litigation at some later date.

<sup>43</sup> Before the Illinois program could have been approved, the Administrator of EPA was required to determine that the program contained adequate authority to ensure compliance with all applicable requirements of section 308. 33 U.S.C. 1342(b)(2) (1976).

<sup>44</sup> See text pp. 4-5 & note 4, *supra*.

be incorporated into Mobil's NPDES permit. In fact, however, it is clear that EPA can determine, and indeed in the past has determined, whether Mobil is in compliance with its NPDES permit by sampling Mobil's discharges at the points specified in that permit. It is equally clear that EPA could not use the data it obtained by sampling Mobil's internal wastewater streams to write new permit limits for the Joliet refinery or other petroleum refineries.

As discussed above, Mobil's permit requires it to sample its wastewater streams at points representative of their discharge to navigable waters. The Illinois Environmental Protection Agency, which issued Mobil's NPDES permit and has primary enforcement responsibility to monitor compliance with that permit's terms, also samples for compliance at those points. Based on its own sampling of the Joliet refinery, Illinois has consistently found Mobil's discharges to be in conformance with its permit.<sup>47</sup> And Illinois has never found it necessary to sample Mobil's internal wastewater streams to determine the facility's compliance status. Nor has EPA ever found such sampling necessary to determine compliance until the incident which is the subject of this case.<sup>48</sup> Against this background, it is clear that the first justification advanced by Mr. Barney in his affidavit was totally without basis.

Similarly, there is no basis for Mr. Barney's claim that the internal wastewater stream data were needed

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<sup>47</sup> Illinois sampled Mobil's discharges at the points specified in Mobil's permit during the April 1982 inspection at which EPA was denied permission to sample Mobil's internal wastewater streams. Based on its sampling, the State determined that Mobil was in full compliance with the terms of its permit. App. 41a.

<sup>48</sup> Indeed, EPA's own documents demonstrate that compliance inspection sampling is to be performed "at the facility's discharge and other NPDES permit-designated monitoring points." App. 93a.



for the purpose of developing additional effluent limitations for Mobil's permit. EPA can impose technology based limits in NPDES permits only if they are required by existing effluent limitations guidelines regulations,<sup>49</sup> or if they are developed pursuant to the Agency's asserted authority to establish case-by-case limits under section 402(a)(1) of the CWA.<sup>50</sup> EPA's nationally applicable BAT limitations and new source standards for the petroleum refinery point source category, which were promulgated on October 18, 1982,<sup>51</sup> had already been proposed and the rulemaking record closed substantially before EPA's internal sampling of the Joliet refinery took place.<sup>52</sup> Thus the data obtained by EPA from Mobil could not be used for that rulemaking proceeding.

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<sup>49</sup> Among other things, NPDES permits require point sources to comply with the applicable effluent limitations or new source performance standards established by rule under sections 301 and 306 of the Act, 33 U.S.C. §§ 1311, 1316 (1976 & Supp. V 1981), for categories of similar point sources. 33 U.S.C. § 1342(a)(1) (1976). See *EPA v. National Crushed Stone Ass'n*, 449 U.S. 64, 71 (1980); *E.I. duPont de Nemours & Co. v. Train*, 430 U.S. 112, 121 (1977). Effluent limitations promulgated under section 301(b) must require the application of the best practicable control technology currently available by July 1, 1977, and the application of the best available technology economically achievable (BAT) by July 1, 1983, 33 U.S.C. § 1311(b) (1976 & Supp. V 1981), while those promulgated under section 306 require new sources to comply with best available demonstrated control technology at the time they commence discharging. 33 U.S.C. § 1316(a)(1) (1976).

<sup>50</sup> Section 402(a)(1) of the CWA authorizes inclusion in an NPDES permit of "such conditions as the Administrator determines are necessary to carry out the provisions of this chapter," but only when the Administrator retains the authority to issue NPDES permits and does not delegate that power to the state. 33 U.S.C. § 1342(a)(1) (1976).

<sup>51</sup> 47 Fed. Reg. 46434 (1982).

<sup>52</sup> EPA gave no indication during the course of its effluent guidelines rulemaking for the oil refinery industry that it was sampling Mobil's facility for the purpose of obtaining data for use in that proceeding.



Moreover, since it is Illinois, not EPA, which issued Mobil's permit, EPA had no authority under section 402(a)(1) of the Act to impose additional limitations in that permit. EPA claims limited authority in its regulations to establish case-by-case effluent limitations for pollutants that are not controlled under applicable effluent limitations guidelines regulations.<sup>53</sup> However, by its terms, this regulation allows EPA to establish such limitations only in federally issued permits.<sup>54</sup> Thus, neither of the purposes alleged by Mr. Barney justified the sampling of internal wastewater streams at Mobil's refinery.

It is, therefore, clear that EPA had no authority under section 308 to engage in sampling of Mobil's internal wastewater streams. Since the Agency had no statutory authority to engage in such sampling, there could have been no probable cause for issuance of the warrant in this case.

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<sup>53</sup> See 40 C.F.R. § 125.3 (1983).

<sup>54</sup> *Id.*

## CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari to review the opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on September 14, 1983 should be granted.

Respectfully submitted,

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February 6, 1984

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 AIMCO (ALPHA) Shipping Company  
 AIMCO (Blasbjerg) Limited  
 AIMCO (OMEGA) Shipping Company Ltd.  
 Aircraft Fuel Supply B.V.  
 Airtankdienst Koln  
 AK Chemie GmbH  
 AK Chemie GmbH & Co. KG  
 Akauma Rekisei Kogyo Kabushiki Kaisha  
 Alexandroupolis Petroleum Installation S.A.  
 Allied Asphalts Limited  
 Alpa Alet Ve Dayanikli Tuketim Mamulleri Pazarlama A.S.  
 Altona Petrochemical Company Limited  
 Alyeska Pipeline Service Company  
 Ankara Gaz Satis Anonim Sirketi  
 Arabian American Oil Company  
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 Arabian International Maritime Company  
 The Arabian Petroleum Supply Company (S.A.)  
 Arabian Shipping & Trading Company S.A.  
 Arabian Trading Company S.A.  
 Aral Aktiengesellschaft  
 A/S Fjellvegen  
 A/S Kongena Plass I

A/S Moretral

Ammenn GmbH

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Associated Ocel Company (Plant) Limited

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Brazos Heights Housing Incorporated

Brussels Airfuels Service S.C.

Buffalo River Improvement Corporation

Canner's Stem Company, Incorporated

Cansulex Limited

Canyon Reef Carriers, Inc.

Cartoenvases Valencia, S.A.

Carton de Colombia, S.A.

Carton de Venezuela, S.A.

Cartones Nacionales, S.A.

Celmisia Shipping Corporation

Celulosa y Papel de Colombia, S.A.

Central African Petroleum Refineries (Pvt) Limited

Central Kagaku Kabushiki Kaisha

Cercera S.A.

Changi Airport Fuel Hydrant Installation Pte. Ltd.

Chuo Nenryo Gas Kabushiki Kaisha

Colombianos Distribuidores de Combustibles, S.A.  
 (CODI)  
 Colonial Pipeline Company  
 Combustibles Colmerauer  
 Comet-Brennstoffdienst GmbH  
 Commodore Maritime Company, S.A.  
 Compagnie Africaine de Transport Cameroun  
 Compagnie D'Entreposage Communautaire  
 Compagnie Immobiliere (Comimmo)  
 Compagnie Regionale de Distribution de Produits  
 Petroliers-C.O.R.E. Dis.  
 Compagnie Rhenane de Raffinage  
 Compagnie Senegalaise des Lubrifiants (C.S.L.)  
 Compania Colombiana de Empaques Bates, SSA  
 Compania Colombiana De Forestacion S.A.  
 Compania de Lubricants de Chile Limitada  
 (Copec-Mobil Ltda.)  
 Compania Mexicana de Especialidades Industriales, S.A.,  
 de C.V.  
 Consortium Raymond Duez  
 Constructura Calle 67, Limitada  
 Constructora Calle 70, S.A.  
 Cook Inlet Pipe Line Company  
 CORCOP  
 Corrugadora de Carton, S.A.  
 C.R.C. Lyon Chauffage  
 CRCP  
 Cyprus Petroleum Refinery Limited  
 D. Muhlenbruch GmbH  
 D. Muhlenbruch GmbH & Co., KG  
 Dai Nippon Yusen K.K.  
 Dearborn Land Company  
 De. Ha.—Industria Petrolifera  
 Depot Petrolier de Mourepiane  
 Depot Petrolier du Gresivaudan  
 Depot de Petrole Cotiers  
 Depots Petroliers de La Corse (DPLC)  
 Duetche Mobil Oil Exploration Ireland Ltd.  
 Deutsche Pentosin-Werke GmbH

Deutsche Transalpine Oelleitung GmbH  
 Dicomi S.r.l.  
 Dixie Pipeline Company  
 Drivmedelscentralen AB  
 Dukhan Services Company  
 East Japan Oil Development Company Ltd.  
 Eastern Lease Company Ltd.  
 East Texas Salt Water Disposal Company  
 Emoleum (Asphalts) Limited  
 Entrepot Petrolier de Chambery  
 Entrepot Petrolier de Dijon  
 Entrepot Petrolier de Mulhouse (E.P.M.)  
 Entrepot Petrolier de Nancy  
 Entreprise Jean Lefebvre  
 Erdgas-Varkaufs-Gesellschaft mbH  
 Erdoel-Lagergesellschaft mbH  
 Erdoel-Raffinerie Neustradt GmbH & Co., oHG  
 Erdoelbetrieb Reitbrook  
 Erdoelraffinerie Gesellschaft mbH in Liquidation  
 Etablissements Bouthenet  
 Etablissements Nicol and Cie  
 Ets. Le Goff  
 Ets. R. Saillard  
 Etablissements Wagner  
 Faavang Autoverksted A/S  
 FACEL  
 Fairwind Maritime Company, S.A.  
 Felix Oil Company  
 Fibil, S.A.  
 Fibras Internacionales de Puerto Rico, Inc.  
 Filtroleo-Soviedade Portuguesa de Filtres Ida.  
 Filtroes De Costa Rica S.A.  
 Finsbury Printing Limited  
 First Eastleigh No. 163 (Proprietary) Limited  
 Fountain Garage (East Park) Ltd.  
 Fountain Garage (Meadowhead) Ltd.  
 Fountain Garage (Mercury) Ltd.

Fountain Garage (Newbury Park) Ltd.  
 Fountain Garage (Stirchley) Ltd.  
 Frome-Broken Hill Company Proprietary Limited  
 Fruehmesser Mineraloelhandels GmbH & Co. KG  
 Fruehmesser GmbH  
 Guso Operations Kabushiki Kaisha  
 Futuro Enterprises (Christchurch) Ltd.  
 Futuro Homes (N.Z.) Ltd.  
 Gaz Aletleri Anonim Sirketi  
 Geomines-Caen  
 Geovexin  
 Ghana Bunkering Services Limited  
 Goteborge Banslesortering AB  
 Groupement Immobilier Petrolier G.I.P.  
 Groupement Petrolier Aviation G.P.A.  
 Groupement Petrolier De Breat (GPB)  
 Handelmaatschappij Hugenholtz & Co. B.V.  
 H. van der Heijden Service Stations B.V.  
 Heizool-Handelsgesellschaft mbH  
 Hallas Gas Storage Company S.A.  
 Home Counties Petroleum Products Limited  
 Hormez Petroleum Company  
 Hydranten-Betriebs-Gasellschaft, Flughafen Frankfurt  
 Imperial Gas Co. of P.R., Inc.  
 Inmunizadoras Unidas, S.A.  
 Industria Da Carbon Del Valle Cauca, S.A.  
 Iranian Oil Participants Limited  
 Iranian Oil Services (Holdings) Limited  
 Iranian Oil Services Limited  
 Iraq Petroleum Company, Limited  
 Iraq Petroleum Pensions Limited  
 Iraq Petroleum Transport Company Limited  
 Istanbul Petrol ve Makine Yaglari Limited Sirkati  
 Japan Airport Fueling Service Co. Limited  
 Japan Solar Energy Co., Ltd.  
 J.E.C.O.P.  
 K. D. Keyzers Investments (Proprietary) Limited  
 K.K. Sankyo Plastics

K.K. Toresen  
 Kanto Kygnus Sekiyu Hambai K.K.  
 Kanto Oil Pipeline Co., Ltd.  
 Kawasaki Kygnus Sekiyu Sambai Kabushiki Kaisha  
 Keihin Kygnus Sekiyu Hambai Kabushiki Kaisha  
 Kaiyo Sea-Berth Company, Ltd.  
 Kettleman North Dome Association  
 Klaus Koehn GmbH  
 Klaus Koehn GmbH & Co. Mineraloel KG  
 Koba Port Service Kabushiki Kaisha  
 Kurt Ammenn GmbH & Co. K.G.  
 Kygnus Ekika Gas Kabushiki Kaisha  
 Kygnus Kosan Kabushiki Kaisha  
 Kygnus Sakiyu Kabushiki Kaisha  
 Kyokyto Petroleum Overseas, Ltd.  
 Kyokyto Sekiyu Kogyo Kabushiki Kaisha  
 Las Nouveaux Comptoirs Petroliers  
 Les Supermarches De Cote D'Ivoire  
 Likit Petrol Gazi ve Yakit Ticaret A.S.  
 Loba Chemie Gesellschaft mbh  
 Lubricantes del Sur, S.A.  
 Marceaux & Cie  
 Matco Tankers (U.K.) Limited  
 Maury Manufacturing Company, Inc.  
 Mediterranean Refining Company  
 Meentzen & Franke GmbH & Co.  
 Mobil Ami, S.A.  
 Mobil Atlas Sociedad Anonima de Capital Variable  
 Mobil Chemie Belgie N.V. (Mobil Chimie Belge S.A.)  
 Mobil Comercio, Industria & Services Ltda.  
 Mobil Gaz-Mobil Petrol Gazlari Anonim Sirketi  
 Mobil Korea Lube Oil Industries Inc.  
 Mobil Motor Rest AG  
 Mobil Nile Oil Company  
 Mobil Oil Cameroun  
 Mobil Oil Cote d-Ivoire  
 Mobil Oil Dahomey  
 Mobil Oil de Mexico, Sociedad Anonima



Mobil Oil Djibouti, S.A.  
 Mobil Oil Francaise  
 Mobil Oil Gabon  
 Mobil Oil Ghana Limited  
 Mobil Oil Haute Volta  
 Mobil Oil Holdings, S.A.  
 Mobil Oil Mali  
 Mobil Oil Maroc  
 Mobil Oil Mauritania  
 Mobil Oil Niger  
 Mobil Oil Nigeria Limited  
 Mobil Oil Nord-Africaine  
 Mobil Oil Phillippines Inc.  
 Mobil Oil Portuguesa, S.A.R.L.  
 Mobil Oil Rwanda-Burundi (S.A.R.L.)  
 Mobil Oil Senegal  
 Mobil Oil Tchad  
 Mobil Oil Togo  
 Mobilrex  
 Mobil Tunisie  
 Molinos de Carton y Papel, S.A.  
 Morem  
 Mosul Petroleum Company Limited  
 Motel Rest SA  
 Mt. Marrow Blue Metal Quarries Pty.  
 Ndola Oil Storage Company Limited  
 Near East Development Corporation  
 New Zealand Refining Company Limited, The  
 New Zealand Synthetic Fuels Corp. Ltd.  
 New Zealand Synthetic Fuels (Housing) Corporation  
 Limited  
 Nichimo Oil (Bermuda) Co., Ltd.  
 Nichimo Sekiyu Seisei Kabushiki Kaisha  
 Nippon Unicar Company Limited  
 Norddeutsche Erdgas-Aufbereitungs GmbH  
 Nordic Storage Company Ltd.  
 Nottingham Gas Limited  
 N.V. Rotterdam-Rijn Pijpleiding Maatschappij

N.V. Socony-Standard-Vacuum Oil Company  
 Occidental de Empaques, Ltda.  
 Octel Associates  
 Oil Kol (Proprietary) Limited  
 Oil Service Company of Iran (Private Company)  
 Oldenburgische Erdoel Gesellschaft mit beschränkter  
     Haftung  
 Olympic Pipe Line Company  
 Osage Pipe Line Company  
 P.T. Arun Natural Gas Liquefaction Company  
 P.T. Stanvac Indonesia  
 Paloma Pipe Line Company  
 Pars Investment Corporation  
 Pembalta Gas System No. 1 Ltd.  
 Pembalta Gas System No. 3 Ltd.  
 Pembalta Gas System No. 4 Ltd.  
 Pembalta Gas System No. 5 Ltd.  
 Pembalta Gas System No. 6 Ltd.  
 Perretti Petroli S.p.A.  
 Petrocab  
 Petrogas Processing Ltd.  
 Petroleum Development (Cyprus) Limited  
 Petroleum Refineries (Australia) Proprietary Limited  
 Petroleum Services (Middle East) Limited  
 Petroleum Tankship Company Inc.  
 Petromin Lubricating Oil Company  
 Petromin-Mobil Yanbu Refinery Company Ltd.  
 Pip Line Banal de La Goulette  
 Flagadizos para la Industria S.A.  
 Poly Oil Chimie (P.O.C.)  
 Prespak (Proprietary) Limited  
 Qatar Petroleum Company Limited  
 Qualbank, Inc.  
 Rainbow Pipe Line Company, Ltd.  
 Randhurst Corporation  
 Reforestadora Andina, S.A.  
 Reforestadora del Cauca, S.A.  
 Rhodes Petroleum Installation S.A.

Rivere Court Estates, Limited  
 Rohel-Aufsuchunga Gasellschaft mbH  
 Ruhrgas Aktiengesellschaft  
 S&M Pipeline Limited  
 S. A. Ets. Georga DUBOIS  
 S. A. Mas & Cie  
 S.A.M. Lebreton  
 Samarco (Alpha) Shipping Company  
 Samarco (Beta) Shipping Company  
 Sanwa Kasei Kogyo Kabuskiki Kaisha  
 SARL Garage Pineau  
 Sarni S.p.A.  
 Saudi Arabian Maritime Company  
 Saudi Can Company, Ltd., The  
 Saudi Chemical Industries Company Limited  
 Saudi Maritime Company Ltd.  
 Saudi Tankers Limited  
 Saudi Yanbu Petrochemical Company  
 Schubert Kommanditgesellschaft  
 S.C.I. Du Fonds Du Val  
 Segher de Mexico, S.A. de C.V.  
 Seibu Kygous Sekiyu Hambai Kabushiki Kaisha  
 SENERCO  
 Seram Societa per Azioni (S.p.A.)  
 Sierra Leone Petroleum Refining Company Limited, The  
 R. Simonnet & CIE  
 Societdade Portugal Marrocos SARL  
 Societa Iatliana per l'Oleodette Transalpino, S.p.A.  
 Societe Africaine de Raffinage  
 Societe Agricole Des Entreprises Petroliares (S.A.D.E.P.)  
 Societe Alfred Ott & Cie  
 Societe Belge de Transport par Pipeline S.A.  
 Societe Camerounaise des Depots Petroliers (S.C.D.P.)  
 Societe Camerounaise Equatoriala De Fabrication De  
 Lubrifiants "S.C.E.F.L."  
 Societe Civile de Mustapha  
 Societa Civile Immobiliere Courselles-Etoile

Societe Civile Immobiliere de Construction de 34 Avenue  
 de General Leclerc a Boissay-St-Leger  
 Societe Civile Immobiliere de Construction "La Residence  
 Brune"  
 Societe Civile Immobiliere de 10 Bd. de la Republique A  
 La Garenne-Colombes  
 Societe Civile Immobiliere Klaber-Etoile  
 Societa Civile Immobiliere La Fontaine Sait Lucien  
 Societe Civile Immobiliere Mobil  
 Societe Dahomeenne d'Entreposage de Produits Petroliers  
 Societe d'Armement Fluvial et Maritime "SOFLUMAR"  
 Societe de Construction & de Gastion CB 12  
 Societe de Distribution Gastelroussine (SODICA)  
 Societe de Gaz D'Oceanic (SOGADOC)  
 Societe de Manutention de Carburants Aviation  
 (S.M.C.A.)  
 Societe de Manutention de Carburants Aviation  
 Dakar-Yoff  
 Societe de Manutention de Carburants Aviation de Tahiti  
 (SOMCAT)  
 Societe de Maperialx d'Etancheite Pour Le Entreprises  
 (Maple)  
 Societe d'Entreposage de Bobo-Dioulasso (S.E.B.)  
 Societe d'Entreposage d'Hydrocarbures de Bingo  
 (SEHBI)  
 Societe d'Entreposage de San Pedro (SESP)  
 Societe d'Entreposage Petrolier au Burundi  
 Societe de Renovation D'Embaliage Metalliques (REM)  
 Societe d'Habitations a Loyer Modere de al Seine  
 Maritime  
 Societe des Bitumes at Cut-Backs du Cameroun  
 Societe des Etablissements Goux  
 Societe Des Huiles Lemahieu  
 Societe de Pipe-Line Sud-European  
 Societe Francaise Stoner-Mudge  
 Societe Gabonaise d'Entreposage de Produits Petroliers  
 Societe Gobanaise de Raffinage

Societe Industrielle des Asphaltes at Petroles de Lataquie  
 (Syria) S.A.  
 Societe Jean Roussel S.A.  
 Societe Ivoirienne de Fabrication de Lubrifiante  
 (S.I.F.A.L.)  
 Societe Ivoirienne de Raffinage  
 Societe Mauritanienne d'Entreposage de Produits  
 Petroliers  
 Societe Nationale de Raffinage (Sonara)  
 Societe Nouvelle Raffinerie Meridionale De Ceresines  
 (RMC)  
 Societe Novodis  
 Societe Pizo De Formulation De Lubrifiants (PIZOLUB)  
 Societe Regionale De Produits Petroliers  
 Societe Regionale de Produits Energetiques  
 Societe Rahitienne de Depota Petroliers  
 Societe Tchadienne D'Entreposage de Produits Petroliers  
 Societe Togolaise d'Entreposage (STE)  
 SOMODIP  
 Sonarep (South Africa) (Proprietary) Limited  
 SONEX  
 South African Oil Refinery (Proprietary) Limited  
 South Saskatchewan Pipe Line Company  
 South West Africa Road Binders (Proprietary) Limited  
 Statfjord Transport A.S.  
 Station-Service Lunas  
 Sydney Metropolitan Pipeline Pty. Ltd.  
 Syria Petroleum Company Limited  
 T.R. Miller Mill Company, Inc.  
 Tanklagergesellschaft Koln-Bonn  
 Tecklenburg GmbH  
 Tecklenburg GmbH & Co. Energiebedarf K.G.  
 Texoma Pipe Line Company  
 Thailand Lubricant Products, Limited  
 Thailand Solvent Products, Ltd.  
 Thums Long Beach Company  
 Toa Manryo Kogyo Kabushiki Kaisha  
 Tohko Plastics Co., Ltd.

Tonen Energy International Corp.  
 Tonen Sekiyu Kagaku Kabushiki Kaisha  
 Tonen Kanker Kabushiki Kaisha  
 Tonen Technology Kabushiki Kaisha  
 Total Centrafricaine de Gestion (TOCAGES)  
 Toulouse-Distribution Produits Petroliers  
 Toyoshina Film Co., Ltd.  
 Tradewind Film Co., Ltd.  
 Tradewind Maritime Co., S.A.  
 Transalpine Finance Holdings S.A.  
 Transalpine Oelleitung in Ooesterreich Gessellschaft  
     m.b.H.  
 Trans-Arabian Pipe Line Company  
 Transgas Umachlege-Lager-Und Transport Gesellschaft  
     MbH  
 Turkish Petroleum Company Limited  
 Twifo Oil Plantations Ltd.  
 UBAG Unterflur Betankungsanlega Flughafan Zurich  
 Union Grafica, S.A.  
 United Kingdom Oil Pipelines Limited  
 W.A.G. Pipeline Pry. Ltd.  
 Wako Kasei Kabushiki Kaisha  
 Wakohjushi Kabushiki Kaisha  
 Walton, Gatwick Pipeline Company Limited  
 Werner Weidemann Mineraloelvertich G.m.b.H.  
 West Shore Pipe Line Company  
 Wolverina Pipe Line Company  
 WSG, Warmeservice Gmbh  
 Wyco Pipe Line Company  
 Zaire Mobil Oil  
 Zaire Services Des Entreprises Petrolieras